IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 129 OF 2006
IN
WRIT PETITION NO. 5034 OF 1996

M/s. Batuwa the Small Leather Goods Company, 37, Suyog Industrial Estate, L.B.S. Marg, Vikhroli (West), Mumbai - 400 079. .. Appellant (Ori.Petitioner)

Versus

Prabha Hanumant Talekar Building No.40, Room No.1280, Tagore Nagar, Vikhroli (West), Mumbai - 400 083. .. Respondent (Ori.Respondent)

ALONGWITH

LETTERS PATENT APPEAL NO. 137 OF 2006
IN
WRIT PETITION NO. 4116 OF 1996

M/s. Batuwa the Small Leather Goods Company, 37, Suyog Industrial Estate, L.B.S. Marg, Vikhroli (West), Mumbai - 400 079. .. Appellant (Ori.Petitioner)

Versus

Miss Shakuntala Vernekar Group No.3, Room No. 4132, Tagore Nagar, Vikhroli (E), Mumbai-83. .. Respondent (Ori.Respondent)

Mr. S.M. Naik with Mr. S.K. More for the appellants in both LPAs.

Mr. N.M. Ganguli for respondent in both LPAs.

CORAM: R.M. LODHA &
S.J. VAZIFDAR, JJ.

DATED: 10TH JULY, 2006

ORAL JUDGMENT : [Per R.M. Lodha, J.]

. We admit both the aforesaid Appeals and by consent of the counsel for the parties, we have taken up these Appeals for hearing at this stage and dispose of the same by this common order.

2. On 18th April, 2006, the learned Single Judge dismissed both the Writ Petitions filed by the present appellant for not furnishing the Bank Guarantee in terms of the stay order dated 11th March, 1997. For the sake of convenience, we shall refer to the present appellant, "the employer" and the respondents, "the workmen".

3. The counsel for the employer candidly conceded that there was default in furnishing security or Bank Guarantee as per the order dated 11th March, 1997. He submitted that he would not justify the default, but now since the employer is ready and willing to deposit the entire amount of back wages along with lump sum interest of Rs.25,000/- in respect of each of the workmen, an opportunity be granted to the employer to deposit the said amount and the Writ Petitions be restored for consideration on merits.

4. Mr. M.N. Ganguli, the counsel for the workmen in both the Appeals submitted that the employer, without any justifiable ground, failed to furnish security or Bank Guarantee as directed in the order dated 11th March, 1997 and having taken advantage of its own wrong for almost 9 years, the learned Single Judge was justified in dismissing both the Writ Petitions and discharging the Rule.

5. The service of the workmen was terminated in the month of February, 1992. The workmen challenged their termination by raising Industrial dispute which was referred for adjudication to the concerned Labour Court. The Labour Court set aside the Award and ordered reinstatement of the workmen with back wages. The two Awards passed by the Labour Court were challenged by the employer by filing Writ Petition Nos.4116 of 1996 and 503 of 1996. Rule was issued in both these Petitions on 11th March, 1997 and an interim order with regard to back wages was passed subject to the employer furnishing security or Bank Guarantee to the satisfaction of the Registrar for an amount of Rs.75,000/- each.

6. Though the concerned workmen were reinstated, the employer did not furnish security or Bank Guarantee with regard to back wages. It appears that when the

Writ Petitions came up for hearing, the Court was told that the employer has not furnished security or Bank Guarantee as directed on 11th March, 1997. The learned Single Judge was of the view that the order dated 11th March, 1997 having not been complied with, the employer was not entitled to any relief in the matter and consequently dismissed the Writ Petitions with interest and costs.

7. In our view, the impugned order deserves to be set aside. We hold so firstly because if the employer failed to furnish security or the Bank Guarantee as per the order dated 11th March, 1997, the workmen were at liberty to execute the Award. The interim order was conditional and upon the condition having not been fulfilled, there was no impediment for the workmen in executing the Award. The fact of the matter is that the workmen did not take any steps in executing the Award. Rule in the matter having been issued, the workmen having been reinstated, if the security or Bank Guarantee was not furnished by the employer as per the order dated 11th March, 1997, the learned Single Judge could have ensured compliance thereof but he was not justified in dismissing the Writ Petitions on that ground alone. Secondly, and more importantly, the counsel for the appellant made the statement before us

that now within four weeks, the employer shall deposit the back wages in the sum of Rs.75,000/- along with lump sum interest in the sum of Rs.25,000/- for each of the workmen with the Registry of this Court. In some of the recent judgments, the Supreme Court has held that even if the termination of a workman is held bad in law and order of reinstatement is passed, back wages do not follow as a matter of course. It has to be seen in the facts and circumstances of each case whether upon setting aside the order of termination, the workman is entitled to back wages and if yes, to what extent. In the backdrop of this legal position in the Writ Petitions filed by the employer, it has to to be seen as to whether the workmen are entitled to back wages upon the termination order having been quashed by the Labour Court. The deposit of the back wages alongwith the lump sum interest of Rs.25,000/- by the employer, in the circumstances, meets the ends of justice and the issues raised in the Writ Petitions, in our considered view, are required to be considered on merits.

8. Mr. N.M. Ganguli, the counsel for workmen strenuously urged that the amount may be allowed to be withdrawn by the workmen. We leave this aspect to be considered by the learned Single Judge. The application, if any, in that regard shall be considered

by the learned Single Judge if the Writ Petitions are not heard at an early date.

9. We, accordingly, dispose of these two Appeals by the following order:

(i) Subject to appellant's depositing an amount of Rs.1,00,000/- in each of the Writ Petitions (Writ Petition No.4116 of 1996 & Writ Petition No. 503 of 1996) within four weeks from today, the impugned order dated 18th April, 2006, shall stand set aside and both the Writ Petitions shall be restored to file.

(ii) The Registry is directed to invest the amount so deposited by the appellants without loss of time in Fixed Deposit of any Nationalized Bank, initially for a period of one year renewable thereafter for the same period each time until disposal of the Writ Petitions subject to any order of withdrawal that may be passed by the learned Single Judge.

(iii) In case the amount as aforedirected is

not deposited by the appellants, both these Appeals shall stand dismissed and the impugned order dated 18th April, 2006 shall be treated having not been interfered with in Appeals.

(iv) The workmen shall be at liberty to apply for withdrawal of the amount if the Writ Petitions are not heard within reasonable time. In that event, the appellants shall be free to contest such application on all available grounds.

(v) We clarify that upon the appellant's depositing the amount as aforedirected within time, the execution of the impugned order for back wages shall remain stayed.

. No costs.

Sd/-
[R.M. LODHA, J.]

Sd/-
[S.J. VAZIFDAR, J.]